

Notice of Allowability

Application No.

09/857,524

Examiner

Manjunath N. Rao, Ph.D.

Applicant(s)

CAHOON ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the communication of 8-14-04.
2. ☒ The allowed claim(s) is/are 20-26 and 33-42.
3. ☒ The drawings filed on 14 August 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Manjunath N. Rao, Ph.D.
Primary Examiner
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DETAILED ACTION

Claims 20-26, 33-42 are currently pending and are present for examination.

Applicants' amendments and arguments filed on 8-17-04 have been fully considered and are deemed to be persuasive to overcome the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. Specifically Examiner has withdrawn the rejection under 35 U.S.C. 112, 2nd paragraph in view of claim amendment. The previous rejection of claim 39 under 35 U.S.C. 112, 1st paragraph for new matter issue has also been withdrawn in view of explanations provided by the applicant. On similar lines, in view of the elaborate sequence comparison (specifically the table provided by the applicant under the 'remarks' section) and the persuasive arguments provided by the applicant, the rejection under 35 U.S.C. 112, 1st paragraph that claims containing the "percent sequence identity" language as not enabled has been withdrawn.

Examiner acknowledges the entry of the previous amendment to the specification (11-20-03) filed by the applicant to delete the hyperlinks in the specification.

Drawings

Drawings submitted in this application are accepted by the Examiner for examination purposes only.

Priority

Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

Allowable Subject Matter

Claims 20-26, 33-42 are allowed.

The following is an examiner's statement of reasons for allowance: Following a diligent search it was determined that the prior art neither teaches nor suggests a polynucleotides with SEQ ID NO:1, 3, or 7 encoding the polypeptides with SEQ ID NO:2, 4, and 8 respectively having a sphingolipid desaturase activity as claimed in claims 20-26, 33-42.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Manjunath N. Rao, Ph.D. whose telephone number is 571-272-0939. The Examiner can normally be reached on 7.00 a.m. to 3.30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy can be reached on 571-272-0928. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306/9307 for regular communications and for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

A handwritten signature in black ink, appearing to read 'Manjunath N. Rao', with a stylized flourish at the end.

Manjunath N. Rao, Ph.D.
Primary Examiner
Art Unit 1652

October 26, 2004